The Judicial Article of the 1970 Illinois Constitution

by
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THE JUDICIAL ARTICLE OF THE 1970 ILLINOIS CONSTITUTION

Staff Summary

This analysis of Article VI of the 1970 Illinois Constitution was prepared for the Committee of 50 by Nancy Ford, Director of the Center for Legal Studies at Sangamon State University. The debate over the method of selecting judges remains one of the most controversial issues involving the judicial article of the 1970 Constitution. It is one of several issues likely to surface should a new constitutional convention be called. Other controversial issues include the retention-election of judges, discipline of judges, separation of powers, court centralization, the election/appointment of circuit court clerks, and the use of nonjudicial court officers.

A number of organizations and academics continue to press for the adoption of the nonpartisan appointment of judges based on the concept of merit. They propose that candidates be screened by a panel whose members have the expertise necessary to evaluate the characteristics of a good judge, with the governor making the appointments based upon the panel's recommendations. Appointment versus election of judges was a divisive issue at the 1969 Constitutional Convention. It was submitted to the voters as a separate question, with the result in favor of the continued election of judges. Should a new convention be called, the selection question would again be divisive; but there is little reason to believe that its resolution would be any different than in the past.

The current retention-election system of determining how judges remain in office has been criticized as working too well. The system was designed to establish greater security of judicial tenure by making it more difficult to remove incumbents, while also permitting the electorate to participate in the decision as to whether or not a judge should be re-elected or removed. If 60 percent of those voting answer "yes," a sitting judge is retained. It is charged that under this system, however, voters seldom remove a judge, even when he or she has been found to be unqualified or has been convicted of a crime.

Likewise, the current system for the discipline of judges has been questioned. Reformers argue that Illinois Supreme Court decisions have eroded the independence and authority of the two regulatory bodies, the Judicial Inquiry Board and the Courts Commission. They also claim that the Judicial Inquiry Board does not prosecute all cases deserving of prosecution, and that the commission only imposes sanctions on judges who engage in the most serious and repeated forms of misconduct.

Finally, some members of the General Assembly, the Illinois Auditor General and others would amend the Constitution to restrict the power of the Illinois Supreme Court. They are unhappy with a number of Supreme Court decisions in which the court has resolved issues in ways that appear to be favorable to itself. Others would amend the judicial article to allow for the use of nonjudicial court personnel in the resolution of disputes in civil cases, particularly those regarding medical malpractice, child support, and cases where arbitration could reduce litigant and court time and expenses. These issues could be decided by the public through the referendum/ constitutional amendment process. So far, however, no such attempts have been made by the General Assembly.

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Several issues concerning judicial reform captured the attention of the convention delegates, the media and the public during the 1969 Illinois Constitutional Convention and the subsequent referendum on the proposed constitution. Most prominent was the question of whether judges should continue to be elected or instead should be appointed by the governor after being nominated by a judicial nominating commission. This paper will discuss the selection/election question and a number of other highly charged and debated judicial article issues which are likely to surface should a new constitutional convention be called.

Merit Selection of Judges

Illinois Supreme Court, appellate court, and circuit court judges are elected in Illinois. They have been elected to their positions since the adoption of the 1848 Constitution. Before the 1970 Constitution the process was totally partisan, with judicial candidates having to be nominated by a party convention. Although a 1962 judicial article amendment allowed for the nomination of judges either by party convention or primary election, the legislature had passed legislation providing for nomination by party convention only.[1] Because judicial nominees most often were handpicked by political leaders, with the party then rubberstamping their leaders' choice, there was great dissatisfaction with this method. From the beginning it was clear to delegates at the 1970 convention that a change was needed; the disagreement was over what was to be the remedy.

The majority members of the Judiciary Committee of the Constitutional Convention (liberal Republicans, a downstate Democrat, and a suburban Chicago independent) recommended that supreme and appellate court judges be appointed, with circuit judges either elected or appointed, as determined by subsequent legislation. Minority members of the committee, Cook County Democrats and conservative Republicans, proposed the elimination of the convention method of nomination altogether and the substitution of the party primary. They favored continued election of all judges.

On the convention floor, proponents of appointment of judges, or merit selection as it is often called, argued that judges placed on the bench through merit selection would be more independent. Judicial candidates could be thoroughly reviewed by a panel whose members would have the expertise necessary to evaluate their qualifications. The governor would then make appointments based upon panel recommendations. Appointment proponents claimed

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1 Article VI of the Constitution was comprehensively amended in 1962 following approval by the voters. The changes went into effect January 1, 1964.

that lawyers with exceptional judicial talents would be more likely to seek judicial office through merit selection than through the political nominating process. Lawyers no longer would have to develop political support within a political party in order to obtain a judicial nomination; political influence would be minimized. The partisan election system supported by the minority committee members was attacked on the grounds that political influence dominates because (1) a majority of the voters do not know the candidates in a judicial election; (2) judicial campaigns usually attract little attention; and (3) the general public has no criteria for determining which candidates will make the best judges.

Opponents of appointed judges took the position that appointments are "elitist." They also claimed that fewer minorities would become judges if appointment won out. A third proposal which arose outside the judiciary committee called for the nomination of judges by primary election or by petition.

As a final resolution of the dispute (the majority committee members' position was adopted at the conclusion of the first reading and the minority's at the second reading), convention delegates agreed to put the two major alternatives, appointment and election, on the referendum ballot as a separate question. In the referendum that followed, 50.2 percent of the voters supported a revised election system over the proposed system of judicial appointments. The new Constitution allowed for the nomination of supreme, appellate and circuit court judges either by a partisan or nonpartisan primary or by the filing of a petition. Implementing legislation provided for partisan primaries and elections and for the nomination by petition of independent candidates. Only associate circuit court judges are appointed. They are selected by the secret ballot of the elected circuit judges in each of the judicial circuits. Approximately 40 percent of all Illinois judges are associate judges.

In the years since the convention, most candidates have chosen to run for judgeships with party identification and support; some individuals have been nominated over their party's slated candidates. The 1970 constitutional revision is seen by many as an improvement because it eliminated the discarded party convention method of nominating the candidates who then stood for partisan election. But it continues to be criticized as not having gone far enough. The debate over the method of selecting judges is one of the most controversial issues in Illinois government, and several proposals have been introduced in the General Assembly to further modify the means of selecting judges. Each of the proposals would have led to a constitutional amendment and a referendum by the general public. Most proposed a merit selection plan with a judicial nominating commission. Others would require nonpartisan nomination followed by election of judges. None passed the General Assembly.

In a recent development, Governor Thompson appointed a task force to draft legislation that would require an amendment to be placed on the ballot providing for merit selection of judges. Task force members include representatives of the Illinois Supreme Court, the Illinois and Chicago Bar Associations, the Chicago Council of Lawyers, three lawmakers, the Chicago Crime Commission, the Illinois Manufacturer's Association, and Mothers Against Drunk Drivers.

Current House Speaker Madigan also supports the merit selection of judges, but only if the appointments are made by the Illinois Supreme Court rather than the Governor. The Illinois Bar Association recently formed its own committee to draft a similar constitutional amendment.

Judicial Retention

Prior to the revisions of the judicial article in 1962, judges chosen in a partisan election also had to be re-elected in a contested partisan election to remain in office. In an effort to make judges more independent of political machines once they had been elected, a retention-election system was adopted through a 1962 constitutional amendment. The system was intended to establish greater security of judicial tenure by making it more difficult to remove incumbents, while also permitting the electorate to participate in the decision as to whether or not a judge should be re-elected or removed. At the end of a judge's term, instead of running against an opponent, the voters are simply asked whether the judge should be retained in office. If 60 percent of those voting answer "yes" (raised by the 1970 Constitution from 50 percent), the sitting judge is retained for another term. The voters are expected to base their decision on the judge's total record and the question of whether he or she demonstrated independence and competence in judicial decisionmaking.

Excluded from the retention-election provision in the Constitution are judges who are appointed to office -- that is, all associate judges and any judge who is appointed to office to fill a vacancy until an election to fill the office can be held. A Supreme Court rule governs the appointment and retention of associate judges. Currently an incumbent associate judge is appointed to a specified term and then is reappointed for another term upon the favorable vote of three-fifths of the circuit judges within the particular circuit.

At the 1969 convention, there was no challenge to the reaffirmation of the 1962 retention-election provisions. Two important modifications were made, however. The first required that an incumbent circuit judge seek retention from all of the voters of the entire judicial circuit. Previously, judges had been elected and retained only from a single county. A second amendment, referred to above, increased from 50 percent to 60 percent the required affirmative vote needed for the retention of an incumbent judge. The change was precipitated by a concern among a number of lawyers that the simple majority requirement made it virtually impossible to remove any judge.

Critics of the current system are now calling for further constitutional revision. They claim first that nonadversary retention-elections cannot serve their purpose when they are tied to an elective selection process. Their concern is that the retention-election system has worked too well; they believe that it is almost impossible to remove judges, even the most incompetent. The result is that life tenure is given to unqualified judges. In fact, they point out, Illinois is the only state using retention-elections which does not also have a merit system of selection. Their second argument is that it is impossible to find any meaningful relationship between the vote for retention and the competence or incompetence of a particular judge. Voters seldom remove a judge, even if the judge has been found unqualified

by bar associations, other officials, or newspaper editorials, or has been convicted of a crime. Instead, the system appears to be more effective in removing unpopular judges who render decisions that run counter to shifting public sentiment.

Discipline of Judges

The question of judicial discipline attracted a lot of attention during the 1969 Constitutional Convention for two reasons. Two Illinois Supreme Court judges had resigned following an investigation into their alleged misconduct a short time before the convention; and the Illinois Supreme Court in a 1969 case had held a law invalid, as it applied to judges, that required public officers to make certain disclosures of their financial interests. The Supreme Court decision rested on the separation of powers concept and the court's view that the legislature had no constitutional power to impose standards of conduct upon judges. The combination of the incidents of misconduct and the court's decision infuriated some legislators, who vowed to seek constitutional revision.

The Judiciary Committee at the convention was faced with a clear division of opinion on regulation of judicial conduct and the discipline/removal of unfit judges. One group argued for increased legislative or concurrent power to determine standards of judicial conduct and for revision of the recently adopted (1962) constitutional provisions relating to judicial discipline. A second group favored the traditional principle of judicial self-control and discipline.

Though the testimony before the committee reflected these sharply contrasting views, and 13 different proposals for dealing with judicial discipline were produced at the convention, the Judiciary Committee unanimously reaffirmed the more traditional court-controlled approach. It recommended adoption of Section 13, Article VI of the 1970 Constitution, which reads, "The Supreme Court shall adopt rules of conduct for judges and associate judges," and it supported one of the weaker judicial discipline proposals. The whole question had already been partly defused by a previous convention consensus that the legislative power of impeachment of judges would be clearly set forth in the constitution, and by a recommendation of another committee which would require all candidates for office and office holders to file verified statements of their financial interests. Further, the most seriously considered of the reform-oriented judicial discipline proposals, one submitted by the Illinois and Chicago Bar Associations, was seen as too extreme on the other side. It called for the creation of a seven-member courts commission made up of four lawyers and three nonlawyers. The pre-1970 structure was made up of five judges.

The solution finally adopted by convention delegates resulted in a bifurcated, elaborate system of judicial discipline. The Judicial Inquiry Board, made up of lay persons and lawyers (appointed by the governor) and judges (appointed by the Supreme Court), conducts investigations against judges and files formal complaints against judges with the Courts Commission. The Courts Commission consists of five judges, one Supreme Court and two circuit judges (appointed by the Supreme Court), and two appellate judges (appointed by the appellate court). The Commission hears cases and applies remedies which range from censure to removal from office.

The decisions of the Commission are final. There is no provision for appeal. Both the board and the commission are entitled to their own appropriations from the General Assembly and may adopt their own rules of procedure.

The new constitutional plan was thought to be superior to previous provisions, because it gave constitutional autonomy to the Judicial Inquiry Board and the Courts Commission by removing these bodies from the control of the Supreme Court and its court administrator, and because it allowed for the development of standards for discipline. The board is given authority to file a complaint when at least five members believe a basis exists to charge a judge with "willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into dispute," or to charge a judge who is physically or mentally incapable of performing his or her duties.

It is claimed, however, that the system has not worked as it was intended. The Illinois Supreme Court, through a series of cases brought to it by way of the filing of writs of mandamus by judges disciplined by the Commission, eroded the independence and authority of the board and commission. The Court ruled that it could define, and therefore restrict, the board's jurisdiction regarding the filing of complaints. It held that the board could certify to the commission only conduct that was believed to be a violation of the Supreme Court-developed rules of judicial conduct rather than its own standards. And it ruled that the Supreme Court had both the authority and responsibility to determine whether the acts of the Court Commission were beyond its constitutional grant of authority and to declare inappropriate acts invalid. Thus, according to critics, the Supreme Court in effect continues to control judicial discipline. It promulgates the rules of judicial conduct and defines the roles of both the board and commission in disciplining judges.

The Judicial Inquiry Board has been criticized as being too cautious, in that it does not prosecute all of the cases which are deserving of prosecution, and of being too concerned about its record of success before the commission. It drops about five-sixths of all of its cases following only a minimal screening. A very small percentage are referred to the Courts Commission. The Commission has been chastised for imposing sanctions only on judges who engage in the most serious conduct on a repeated basis and for requiring that the Board prove misconduct "beyond a reasonable doubt" rather than by the "clear and convincing" evidence standard specified by the state Constitution. During the period of July 1, 1971, through December 31, 1985, the Commission has removed only 3 judges from office, and all of these cases occurred before 1976. It suspended 9 judges without pay, censured 3, reprimanded 8, dismissed 15 cases, and had one of its orders overturned by the Supreme Court.

Because of continued dissatisfaction with the constitutionally mandated procedures for discipline of judges and the Supreme Court's erosion of the independence of the two regulating bodies, the question of the discipline of judges is also one which will surface should a new constitutional convention be called.

Separation of Powers Issues

When the Illinois Supreme Court expunged the Courts Commission order (see discussion above), it was severely criticized as having acted unconstitutionally itself by failing to follow the intention of the framers of the 1970 Constitution to keep the Supreme Court uninvolved in the judicial disciplinary system's investigation, prosecutorial and adjudicative functions -- either substantively, procedurally, or by way of appeal. The Court has also been criticized for its rulings that the legislature has improperly interfered with judicial activities in a number of other cases. The Court, for example, declared a death penalty statute unconstitutional for interfering with judicial activities by requiring a special tribunal to hear capital punishment cases. It declared a statute which attempted to regulate the process of selecting jurors unconstitutional because the statute interfered with the courts' "inherent power" to make rules governing trial procedure.

The Court has most recently been involved in a dispute with the Auditor General. The Court decided, in favor of its own administrative office, that the Auditor General must audit the books of the Court, except those of the Board of Law Examiners or the Attorney Registration and Disciplinary Commission. The argument was that these are funded by fees collected from attorneys, not from the general revenue fund. The Auditor General refused to audit any Supreme Court accounts if all accounts could not be audited. The Administrative Office of the Illinois Courts brought suit to compel the Auditor General to audit the books. The Supreme Court upheld the trial court's decision to compel the audit. Left unanswered was the question of whether the Auditor General has authority to audit the books of the Board of Law Examiners and the Attorney Registration and Disciplinary Commission. The Administrative Office has taken the position that such an audit would intrude upon the court's inherent and exclusive right to regulate lawyers. The Supreme Court will ultimately be asked to decide the issue, and many believe an outcome in favor of the Court is assured. The Court will also review cases in which circuit judges have refused to bargain collectively with probation officers and circuit court clerk employees, in spite of the passage of a public sector collective bargaining statute requiring public employers to bargain collectively with employees, and orders to that effect issued by the Labor Relations Board.

While recognizing that under the principle of separation of powers, courts have been given the constitutional authority to resolve disputes and to police the constitutional boundaries of other governmental agencies, critics, including members of the General Assembly and others, claim that the Illinois Supreme Court, in the guise of policing constitutional boundaries, has actually been either engaging in constitutional policymaking or intentionally and lawlessly protecting its own interests over those of other branches of government. They may make attempts at a new constitutional convention to deal with this issue head on by introducing explicit language in a revised constitution as to the Court's relationship to the other branches of government.

Court Centralization

In the years preceding 1962, the Illinois courts had become a complicated labyrinth consisting of a supreme court, an appellate court, circuit courts, and a large number of special courts. Many of these courts had overlapping jurisdiction and a number of organizational problems. Under the amended judicial article of 1964, all judicial power was vested in a Supreme Court, an appellate court, and the circuit courts.

The 1970 Constitution made further but consistent organizational refinements. The basic three-tiered structure was retained, but the Supreme Court's mandatory appellate jurisdiction was sharply reduced. Now, only appeals to the Supreme Court from circuit courts in death penalty cases are permitted as a matter of right. All other circuit cases can be appealed to the appellate court. Appeals to the Supreme Court from the appellate can only be taken as a matter of right in two situations: when an Illinois or U.S. constitutional issue is raised for the first time, and when the appellate court certifies an issue as being of extreme importance. Although the workload of the appellate court more than quintupled as a result of the 1962 and 1970 amendments,[2] there is general satisfaction with the current court structure.

The 1962 constitutional reforms also created a unified court structure, placing the Supreme Court at the top of the structure administratively. This position was reaffirmed and strengthened by 1970 constitutional changes. The Supreme Court now has clear authority to assign circuit and appellate court judges to any court, associate judges to any circuit court, and the Court also has "supervisory" authority, in addition to the "administrative" authority it already possessed. A unified system is necessary if the Illinois judicial system is to be an efficient mechanism for the administration of justice.

The Court presently has authority to appoint an administrative director and staff, and it delegates subordinate administrative authority to the chief judge of each appellate district and of each judicial circuit. Many administrative duties are delineated by the Constitution, while the General Assembly may also provide for other administrative duties by statute.

The Court also has fiscal authority, with revenue funds being appropriated to the court by the General Assembly. Funds cover salaries for all judges, appellate law clerks, court reporters, clerks and supreme and appellate courts, day-to-day operational costs of the upper courts, etc.

A significant portion of the cost of maintaining the court system at the circuit court level is, however, borne by county units of government. For years the Supreme Court has supported the adoption of a trial court administration program under which circuit courts could receive additional state-supported administrative personnel, equipment and supplies to assist the chief judge of the circuit in exercising the administrative authority of his/her court. Currently, in some multi-county circuits the county boards

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[2] The number of appellate court judges is subject to legislative determination. The workload problems therefore can be reduced by increasing the number of judges and by the Supreme Court's exercise of its flexible assignment powers.

contribute to a common fund to defray these expenses, while in others they do not. Individual county boards have been reluctant to assume the full responsibility for paying the expenses of the chief judge's office, because it also serves the needs of other counties. Many multi-county circuits have complex administration problems that can't be dealt with, given the scarce resources available to most chief circuit judges. The salaries and duties of many circuit court personnel are paid out of county funds, with a resulting lack of uniformity. The General Assembly has repeatedly rejected Supreme Court requests for state money to fund those functions that could be expected to benefit most from state level administration, such as budgeting, personnel, accounting and purchasing. Others have pushed for even greater centralization of the Illinois court system with all or most court personnel becoming state employees rather than county employees. A proposal has even been made that court-generated revenue be transferred to the state treasury rather than the county treasury. Some have recommended that the financing of trial courts be handled by the creation of local units of government similar to those created under Article VII of the Constitution. Still others have suggested that, in the interest of cost-efficiency, the circuit courts should stop sitting in every county, and instead have regional centers. Opponents of change are worried that greater centralization will result in the availability of court services being further removed from the community, raising questions of public accessibility. The issue facing delegates at a new constitutional convention would be whether constitutional provisions should dictate that all or almost all of the financial responsibility for the state court system should be borne by the state and administered by the Supreme Court.

Appointment of Circuit Court Clerks

Circuit Court clerks are elected for four-year terms at the county level. Due to a change brought about by the 1970 Constitution, appellate and Supreme Court clerks are now appointed. Previously, all court clerks had been selected through the elective process. The 1970 Constitution left unchanged a 1962 amendment giving the legislature the authority to provide for the appointment of circuit court clerks. However, numerous attempts in the intervening years to pass legislation providing for appointment and removal of the clerk by the chief justice of each circuit have failed. Supporters of the election of circuit clerks argue that circuit clerks are closer to the people and serve the people in nonjudicial ways. They believe that the people, therefore, should have a voice in their selection and retention. While supporters of the appointment method argue that circuit clerks are essentially administrators who must work closely with the chief judge of each circuit, they support an appointment process in which the chief judge plays a central role. If Illinois is to follow the lead of other states which have professionalized court support personnel, such as the court clerks, the change is likely to occur only through constitutional convention amendment.

Use of Nonjudicial Court Officers

A number of legislative attempts have been made since the adoption of the 1970 Constitution to establish new methods of determining civil cases, primarily as a means of combating congestion and other problems in the courts. Each major attempt has been declared unconstitutional by the Illinois Supreme Court.

In a 1976 case, the Court invalidated a system of screening panels for medical malpractice cases. The statutory provisions had provided for panels composed of a circuit judge, an attorney, and a physician to consider evidence and render a decision. The Court found the procedures violative of the judicial article, Sections 1 and 9, for empowering nonjudicial members of the medical review panel to exercise a judicial function. The Court also held that the panel procedures unconstitutionally burdened a litigant's right to a jury trial. The Court was persuaded by a report of the Constitutional Convention Committee on the Bill of Rights that stated:

> After considering numerous proposed exemptions to the right of trial by jury the Committee concluded that all were inappropriate. One proposal would have authorized the General Assembly to modify the right to trial by jury "in suits between private persons for damages for death or injury to person or property." The Committee adopted such language on its initial vote, for the purpose of giving the General Assembly authority to prescribe new methods of determining facts in civil cases in order to combat congestion and other problems in the courts. Upon reconsideration the Committee concluded that such an exception was unjustified because these objectives could be sought by administrative and legislative reforms without diluting fundamental jury trial guarantees. (6 Record of Proceedings, Sixth Illinois Constitutional Convention 27)

A 1985 medical malpractice statute met with the same fate. In a case challenging the constitutionality of the statute, the Court ruled that the judicial article was violated by the creation of a screening panel composed of a judge, a practicing attorney, and a health-care professional because the judge shared fact-finding authority with the nonjudicial members. The statute had provided that the judge would have sole authority to determine issues of law and it also had allowed for a de novo trial if one or both of the parties disagreed with the panel's determination. In other states similar practices have been upheld. Other Illinois statutes calling for the creation of three-member panels of circuit judges to carry out various functions have also been held unconstitutional on the grounds that the legislature does not have constitutional authority to create a new court or administer judicial functions.

Section 14 of the judicial article has been interpreted to create additional barriers to alternative methods of handling disputes. That section states that "[t]here shall be no fee officers in the judicial system." The provision, when it was added in 1970, was aimed primarily at the abolition of the office of the master in chancery. However, the Illinois Supreme Court held that the provision (together with Section 9 of the article) bars compulsory arbitration, as was provided by a statute establishing mandatory arbitration of automobile accident victim claims of $3,000 or less and requiring that the losing party in any litigation subsequent to the arbitration order pay the fees of the arbitrator. The statute had provided for de novo review by the circuit court of the arbitrator's award. The Supreme Court equated this process with a trial de novo following an appeal from a justice of the peace or magistrate, which the Court said was intended to have been eliminated by constitutional amendment in 1962. Because the arbitration was a mandatory diversion from the Court, the Court also found it to be a violation of one's right to jury trial, even though a person dissatisfied with the arbitration results could then litigate the case in court.

In an effort to institute mandatory arbitration in Illinois, but at the same time pay attention to the court's prior ruling, the General Assembly recently passed a statute calling for mandatory arbitration of claims not exceeding $15,000. Under the statute, implementation is to be left to the Supreme Court; arbitrators are to be compensated, but the statute does not say who is to pay the compensation; parties dissatisfied with the arbitrator's award remain free to proceed to a trial before a judge or jury. The constitutionality of this statute is subject to challenge.

Some have been concerned that quasi-judicial child support enforcement processes which use minor court officers, such as magistrates or referees, would be unconstitutional. These concerns influenced the Illinois Department of Public Aid to support the adoption of expedited administrative child support processes, rather than the expedited judicial processes used quite successfully by a number of other states.

Should a New Constitutional Convention Be Called?

Since the last constitutional convention, a number of the suggested judicial article reforms have been unsuccessfully introduced in the General Assembly. These have taken the form of either proposed constitutional amendments or legislation to alter current provisions. Among these suggested reforms are calls for the appointment of judges, nonpartisan nomination followed by election of judges, greater state support of circuit courts, and the appointment rather than the election of circuit court clerks. A new constitutional convention would give proponents of these reforms a new vehicle for espousing their views.

With regard to the selection of judges and circuit court clerks, however, it is unlikely that change will in fact result. Support for judicial election came primarily from Cook County Democrats and downstate conservative republicans at the 1969 convention, and from the downstate electorate in the referendum balloting. Electorate support for appointment was more evident in Cook County, the five collar counties, university counties, and counties that were more urban than rural. The opinion of elected officials and the general public on this question has not changed dramatically since 1970. Public support for appointments in Cook County may be more adamant because of the Greylord scandal, but downstate citizens have shown little concern. The organizational support for appointment is much the same as it was in 1969-70. Political parties and leadership generally prefer the election of circuit court clerks. There was less than substantial support for their appointment at the 1969 convention, and at present the greatest push for change comes from the courts.

The question of greater state support of circuit courts should receive more favorable attention at a new convention.[3] The Supreme Court considers this to be the last remaining step in achieving the full unified court system contemplated by the 1964/1970 judicial article amendments. The change is consistent with a national trend in which 27 states have already assumed primary responsibility for funding trial court operations.

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[3] Should the funding of circuit clerk's offices be transferred to the state, additional arguments can be made in support of circuit clerk appointment.

Further convention refinements could also be made in regard to the retention and the discipline of judges, since existing practices have been in place long enough for each to be evaluated in terms of its effectiveness. Both of these issues, however, could be dealt with more feasibly in terms of time, money, and effort via the General Assembly/referendum constitutional amendment process. The same is true regarding the use of nonjudicial court personnel in the resolution of civil disputes and the separation of power issues.

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